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COMMITTEE AGAINST TORTURE

Twenty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 446th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 17 November 2000, at 10 a.m.

Chairman: Mr. GONZALEZ POBLETE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.446/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Canada (CAT/C/34/Add.13)

1. At the invitation of the Chairman, Mr. Jewett, Mr. Therrien, Mrs. Tromp, Mr. McVie, Mr. VanKessel, Ms. Levasseur, Ms. Buck, Ms. Venasse and Mr. Deslauriers (Canada) took places at the Committee table.

2. Mr. JEWETT (Canada) said that his delegation would report on recent measures which Canada had taken to counter torture, excessive use of force and other cruel, inhuman or degrading treatment or punishment.

3. Canada regretted the delay in submitting its report, which was due to the need to obtain comprehensive information from all jurisdictions; in a federal system, that could take time. It viewed the reporting process as a way of engaging officials at all levels of government in implementing Canada's obligations under the Convention. In preparing its reports to the treaty-monitoring bodies, Canada sought the views of a large number of non-governmental organizations (NGOs); their criticisms would be included in the fourth periodic report.

4. In Canada, torture was a criminal offence prohibited by law; no exceptional circumstances could be invoked to justify it. Any act falling within the definition in the Convention was prosecutable. That having been said, there were areas of concern regarding implementation of the Convention, and measures had been taken since the third periodic report to address those difficulties. It should be noted that torture or cruel, inhuman or degrading treatment did not occur in Canada except in aberrational situations, and never as a matter of policy. When it did occur, victims were entitled to various remedies, including compensation.

5. His Government believed that it should be possible to make on-site visits to places of detention, particularly when there had been allegations of torture; to that end, it actively supported an optional protocol to the Convention. Believing that there could be no impunity for such acts, Canada had spearheaded the adoption of the Rome Statute for the International Criminal Court.

6. The Government of Canada had recently made a number of important legislative changes. A new Crimes against Humanity and War Crimes Act had entered into force on 23 October 2000 implementing the Rome Statute, which Canada had ratified on 7 July 2000. The new Act made changes to extradition and mutual legal assistance legislation to enable Canada to comply with its obligations under the Rome Statute. The Act stated that any immunity existing under Canadian law did not bar extradition to the International Criminal Court or to any international criminal tribunal established by a resolution of the United Nations Security Council, and it gave a definition of crimes against humanity that included torture as defined in the Rome Statute.

7. Over the past several years, Canada had taken measures to ensure that it did not provide a safe haven for individuals who had committed war crimes or crimes against humanity. Since December 1999, officials had reviewed all allegations – more than 800 in all - against individuals involved in genocide, war crimes and crimes against humanity. In 10 per cent of the cases, the allegations had been sufficiently serious to warrant a formal police investigation. In addition, every modern case known to the Government was reviewed, and where there was indication of possible involvement by the person concerned in war crimes or crimes against humanity, including torture or genocide, a criminal investigation was undertaken.

8. Although allegations of acts of torture by persons in authority were extremely rare, Canadian police officers found guilty of any such acts were subject to the same laws that applied to all other persons residing in Canada. Federal and provincial mechanisms ensured that citizens could exercise the right to complain about an officer's conduct to an independent public body.

9. Turning to the question of refugees, he said that in April 2000, the Minister of Citizenship and Immigration had tabled a new Immigration and Refugee Protection Act (Bill C-31) in Parliament, which, if passed, would include in the criteria for granting refugee protection the grounds set out in the Convention relating to the Status of Refugees and the Convention against Torture, as well as risk to life or risk of cruel and unusual treatment or punishment. That would merge into one procedure before the Immigration and Refugee Board the grounds for protection, which were currently assessed through three separate procedures. The Board would draw on the Convention against Torture and the Convention relating to the Status of Refugees in defining statutory refugee protection.

10. The Bill also provided for a Pre-Removal Risk Assessment to consider the potential personal risk of return, including risk of torture. With the exception of individuals to be removed to a safe third country, the assessment would be available to all persons under a removal order, including those whose refugee claims had been refused.

11. Canada favoured the safe and timely reintegration of offenders into society. With that in mind, in May 1997 Canada's Correctional Service had established a working group, chaired by a current member of the Human Rights Committee, Maxwell Yalden, which had produced a model to assist the Correctional Service in evaluating and monitoring its policies and practices. For its part, the Correctional Service had set up a separate Human Rights Division to strengthen its human rights capacity and culture.

12. Canada's third periodic report referred to the findings and recommendations of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, headed by Justice Arbour. A majority of the recommendations had been accepted by the Government and implemented to strengthen compliance with legal procedural requirements, including the development of a national strategy for the management of women offenders, an Enhanced Segregation Review Model, the practice of videotaping and review of all use-of-force incidents.

13. The Correctional Service had elaborated a comprehensive national strategy for the management of women offenders. Whereas prior to 1995 there had been only one federal facility for women offenders in Canada and all women offenders had been incarcerated in a maximum-security environment, irrespective of their individual security ratings, between

August 1995 and January 1997 five new regional facilities for women offenders had been opened, including an Aboriginal Healing Lodge, which offered a supportive environment and a variety of innovative correctional programmes.

14. Recognizing the increasing representation of Aboriginal people in the correctional system, Canada had set up a National Strategy on Aboriginal Corrections, which focused on programmes and correctional approaches sensitive to the needs of Aboriginal persons. Federal institutions had introduced Aboriginal healing programmes and opened Healing Lodges in various parts of the country with the cooperation of members of the Aboriginal communities.

15. All detainees and prisoners in Canada had access to legal counsel and mechanisms for lodging complaints. The Correctional Service administered a process for complaints or grievances, which provided for a number of levels of mediation or dispute resolution. The offender also had the option to appeal a decision rendered by this process to a higher authority or to the court. Complaints regarding detention conditions could also be made in confidence to an independent Correctional Investigator, who acted as an ombudsman for federally sentenced offenders and had unfettered access to prisoners and prison facilities.

16. Individuals might also face detention under the Immigration Act, subject to statutory, regular review of the decision to detain. For persons under the age of 18, and especially in cases of unaccompanied minors, the decision to detain was always guided by article 3 of the Convention on the Rights of the Child. The detention of minors was a last resort; a preferred option was to have minors released into the care of provincial child welfare agencies. When minors were detained, every effort was made to ensure that unaccompanied minors had quarters separate from adults, that on-site medical staff were available and that suitable programmes, including access to education, were provided. Children in detention were closely monitored and had access to common areas where toys, games, television, books and outdoor recreation activities were available.

17. The facilities of the Ministry of Citizenship and Immigration had been visited by the United Nations High Commissioner for Refugees, the United Nations Special Rapporteur on the Human Rights of Migrants (in September 2000) and the Canadian Council for Refugees. At the request of his Government, the Inter-American Commission for Human Rights had visited Canada in autumn 1997, meeting privately with detainees in facilities and Toronto and Montreal and observing detention review hearings. The Commission had concluded that the immigration detention centres had appeared to meet the generally applicable minimum standards for detention. Discussions were currently under way with the Canadian Red Cross on establishing a formal, structured monitoring programme.

18. With regard to interim measures, his delegation recalled that in 1997, the Committee had requested that Canada should not remove an individual to his country while his complaint had been under consideration by the Committee. The Minister of Citizenship and Immigration had concluded that in that particular case substantial grounds had not been established for believing that the individual would have been in danger of being subjected to torture and that the risk to public safety and security had been far greater than the risk he would have faced on return.

Given the exceptional circumstances of that case, the individual had been removed, a decision which had not been taken lightly. That was the only case in which Canada had removed an individual for whom an interim-measures request had been received from the Committee.

19. His delegation noted that, following a report on the public inquiry into the deployment of Canadian Forces to Somalia in 1993 and other studies into the military justice system, Parliament had enacted amendments to the National Defence Act, which had come into force on 1 September 1999. The reforms included the establishment of an independent Director of Military Prosecutions empowered to bring charges and prosecute all courts martial. A National Investigation Service had also been formed to investigate all serious offences and prefer charges under the Code of Service Discipline independently of the operational commanders. A Military Police Complaints Commission had been established to carry out independent and impartial investigations of any complaints of misconduct by members of the military police.

20. Canada had a network of organizations to offer services to the victims of torture. One such body was the Canadian Centre for Victims of Torture in Toronto, which provided refugees who had been tortured abroad and their families with counselling and medical, legal and social assistance. The Centre also gave a special English-language course for torture victims.

21. In closing, he said that his delegation looked forward to engaging in an open dialogue with the Committee.

22. Ms. GAER (Country Rapporteur) stressed at the outset Canada's leadership in drafting and implementing standards in United Nations human rights programmes.

23. Her first question about the third periodic report (CAT/C/34/Add.13) concerned the method used to produce it. Although submitted in 1999, the report only covered the period up to 1996 and made little reference to the Committee's earlier concluding observations, although in substance it did address the concerns raised therein. It was a model report, providing in particular a wealth of information about training.

24. Turning to the Committee's areas of concern, she began with article 1 on the definition of torture and noted that the Canadian Charter on Rights and Freedoms contained no specific reference to torture. Could the Canadian delegation provide additional information on how the federal system covered that offence?

25. With regard to article 2 of the Convention, she observed that there was new information on the Finta case. The Committee had been concerned about the decision by the Supreme Court of Canada that even where orders were manifestly unlawful, the defence of obedience to superior orders would still be available to the accused where the accused had no moral choice but to follow them (para. 39). She understood that in ratifying the Rome Statute for the International Criminal Court, Canada had amended its views and legislation on the prosecution of war crimes and crimes against humanity. There was a question whether that also covered torture, the prosecution of the perpetrators of such acts and the extent to which such a defence continued to apply. Certainly cases such as the Finta case, which seemed to grant war criminals, torturers and others immunity from prosecution, were disturbing, and she asked the Canadian delegation to confirm that Canada's position had changed.

26. That led her to raise the question of the prosecution of Canadian personnel in connection with the peacekeeping mission in Somalia. The Committee had received information alleging that such prosecution, although noteworthy, had been confined to lower-level soldiers, whereas there had been a cover-up of the involvement of officers and civilians in acts of torture. In cases where individual soldiers in the field witnessed acts that breached the Convention, could they file a complaint with the federal authorities or was it necessary to proceed through the ranks? What kind of training was provided to peacekeepers and other personnel stationed abroad in preventing torture and ill-treatment and in identifying cases where such practices had taken place? What action could military personnel take to avoid obeying unethical or immoral orders?

27. Turning to article 7, she referred to NGO material indicating that some applicants for refugee status were excluded because of their participation or suspected participation in acts of torture. Amnesty International had reviewed 18 cases in which individuals thus excluded had not been prosecuted and the relevant province prosecution units had not even conducted preliminary inquiries. She asked whether the reluctance to prosecute was in some way related to the Supreme Court decision in the Finta case and whether such persons would be liable to prosecution or extradition under the proposed new legislation. Could they invoke in their defence legal proceedings in another country that had not been conducted impartially or independently and that had shielded them from prosecution?

28. Although article 3 of the Convention concerning non-refoulement had been invoked in a large number of individual petitions to the Committee concerning Canada, a violation had been found in only one case. Nevertheless, considerable concern had been expressed about Canada's apparent challenges to the principle recognized in article 3. The Human Rights Committee, in paragraph 13 of its concluding observations on Canada's fourth periodic report (CCPR/C/79/Add.105), had expressed concern about Canada's position that compelling security interests could be invoked to justify the removal of aliens to countries where they might face a substantial risk of torture or ill-treatment. Referring to its General Comment on article 7 of the International Covenant on Civil and Political Rights, it had recommended that Canada revise its policy to comply with the requirements of that article. The Inter-American Commission on Human Rights had also recently expressed concern about Canada's interpretation of the non-refoulement principle. Article 3 of the Convention had not been incorporated in domestic legislation and recognized refugees could be returned (refoulés) if they were considered a danger to the public or had committed acts that were contrary to Canada's national security interests. The Committee did not consider that such exceptions to the non-refoulement principle were appropriate or admissible.

29. According to both the Inter-American Commission on Human Rights and the Canadian Council of Churches, there were no accessible and effective complaints procedures for asylum-seekers. Rejected asylum-seekers could seek to remain in Canada on the basis of a post-determination refugee claim or on humanitarian or compassionate grounds, but they were required to prove the existence of a personal risk. Risk reviews were not automatic and had been criticized for a lack of transparency, undefined parameters, inconsistency in application and insufficient training of the immigration officers who conducted the reviews. Categories of persons without access to the risk assessment procedure included those whose claims were found to be without basis, those convicted of a serious crime in Canada or who were believed to have

committed war crimes, and rejected asylum-seekers who sought to return after leaving the country. She wished to know whether such persons were covered by the procedure and whether the authorities believed that they were adequately covered.

30. She understood that article 3, paragraph 1, of the Convention had been challenged by the Federal Court of Appeal on the grounds that the prohibition of refoulement was a derogable right. It had reached that conclusion partly by comparing it to article 2, paragraph 2, which explicitly ruled out the possibility of derogation in respect of torture. But rights could be derogated from only at a time of public emergency and no such emergency had been declared in Canada. The Court had also interpreted article 16, paragraph 2, which stated that the provisions of the Convention were without prejudice to the provisions of any other international instrument relating to extradition or expulsion, as meaning that the exceptions to the prohibition of refoulement in the case of alleged threats to national security provided for in article 33, paragraph 2, of the Convention relating to the Status of Refugees were applicable. But article 16 concerned cruel, inhuman or degrading treatment or punishment, whereas article 3 concerned torture. She submitted that the two Conventions should be viewed as complementary rather than contradictory and asked the delegation to explain why the Canadian Government relied on an interpretation that would lower standards and diminish the victim's protection.

31. The Committee had received reports of the use of force and involuntary sedation and the hiring of private companies to secure the removal of rejected asylum-seekers. One such company was said to have private detention facilities in South Africa and Côte d'Ivoire, where individuals were held for unlimited periods while the company sought to have them readmitted to their country of origin. Five persons who were recently removed to Nigeria had reportedly been bound and gagged as they were placed on the aeroplane. She would welcome any information the delegation could provide in response to those allegations. In particular, how could the Government be sure that companies contracted to carry out removals did not act in breach of the Convention?

32. It had been alleged that unaccompanied minors had been detained in connection with the refugee determination process in facilities that were not appropriate for children. She understood that more than a dozen children had been held in one such facility in Ontario for over eight months.

33. She would also welcome information about the use of pepper spray in an incident affecting the aboriginal population in Burnt Church in the province of New Brunswick, at the Asia-Pacific Economic Cooperation (APEC) meetings in Vancouver in 1997 and during the incident that had led to the death of Luc Albert. It had been reported that the Saskatoon police force had, on a number of occasions, driven aboriginal men to the outskirts of the city and abandoned them there, often in sub-zero temperatures. How could such acts be reconciled with Canada's obligations under the Convention?

34. Mr. EL MASRY (Alternate Country Rapporteur) complimented the Canadian authorities on an excellent report and noted with appreciation the measures taken in recent years to prevent and remedy cases of torture and ill-treatment. He welcomed the entry into force of the Crimes against Humanity and War Crimes Act and Canada's ratification of the Statute of the International Criminal Court.

35. While commending the fact that the training programme for law enforcement personnel catered not only for the police force and correctional service but also for members of the armed forces who participated in international operations or assisted in dealing with riots or disturbances, he drew attention to the need to provide comparable training facilities for fisheries enforcement personnel and the staff of private security firms involved in the detention of persons under the Immigration Act. In a recent incident, aboriginal fishermen had allegedly been beaten and their boats intentionally swamped and sunk by fisheries enforcement officers. He asked whether an inquiry had been conducted into the incident.

36. Turning to article 11 of the Convention, he noted that the recommendation in paragraph 88 of the report that steps be taken to ensure that males did not participate in or witness the strip-searching of women in federally sentenced women's facilities had been omitted from the list in paragraph 89 of recommendations that were being implemented. Strip-searches were allegedly still routinely conducted, sometimes without reasonable suspicion. Other allegations concerned the handcuffing or shackling of some minimum security women prisoners and the inappropriate use and abuse of power at Edmonton Institution for Women, including the use of a cage on one occasion to transport a woman from her private family visit to a men's prison. Was it true that the bulk of the recommendations in the Arbour Report had not been implemented and, if so, why not? Women at the new regional prisons in Edmonton, Alberta and Nova Scotia were reportedly subjected to excessive and illegal use of force and had been denied due process rights on a number of occasions. Moreover, the Solicitor General had allegedly sanctioned those actions as well as the decision by the Commissioner of Corrections to segregate women classified as maximum security prisoners and those with significant mental health problems in isolated maximum security units in men's penitentiaries. Apparently Canada was witnessing a marked increase in the number of prisoners with mental health problems. It was feared that isolation and other punitive practices as well as excessive reliance on medication exacerbated the problem.

37. Was it true that the Correctional Service of Canada (CSC) dealt with victims of addiction in a punitive manner, depriving them of privileges and entitlements?

38. Some civil society groups, including the Canadian Bar Association, had urged the authorities not to amend or appeal some provisions of the Criminal Code, which would, inter alia, have made it more difficult for prisoners serving life sentences of 15 years or more to apply for a judicial review of their parole eligibility. He wished to hear the delegation's comments on the issue.

39. With reference to article 12, he asked whether the defence of obedience to superior orders had been invoked in the case of the death of two Somalis in and around the Canadian compound in Somalia in 1993, bearing in mind the reference in paragraph 39 of the report to a Supreme Court ruling that such a defence was available to members of the military or police forces. Had the civil or military authorities compensated the victims of the Somali incident or their dependants?

40. The Country Rapporteur had mentioned the eviction of aboriginals by the Saskatoon city police to the outskirts of town. He wished to add that two men had allegedly died as a result of their action.

41. With regard to article 16, he referred to reports from the Canadian Council of Churches that the practices used when removing rejected asylum-seekers from Canadian territory might amount to degrading or inhuman treatment. The complaints submitted to the Council of Churches alleged, inter alia, extended detention of asylum-seekers while their children were left alone at home and tying up and gagging asylum-seekers and wheeling them on to aircraft for removal. He asked the delegation to comment on the allegations.

42. Mr. MAVROMMATIS referred to the 1997 case, in which Canada had removed an individual to his country despite receiving an interim-measures request from the Committee, and wondered whether there were not other ways of dealing with such situations. In the first place, the Committee could be apprised. Secondly, whatever danger such a person posed could be minimized by keeping him in a secure holding place. Lastly, some argumentation could be given as to why interim measures were not granted, with a view to avoiding a recurrence of the situation.

43. He pointed out that article 3 of the Convention created an absolute prohibition, in some respects going far beyond the Convention relating to the Status of Refugees, and he would welcome some reassurance regarding the State party's position on that article, particularly in view of Canada's excellent record of work on behalf of refugees.

44. With regard to the R. v. Finta case (report, paras. 38-40), he said he found it difficult to understand what additional elements of actus reus and mens rea could have been required. Had the Court specified what the new elements were? Was it a new approach to actus reus and mens rea? He would like to hear more about that. The Convention was, at any rate, absolutely clear: obedience to superior orders could not be given as a defence. Again, he would welcome the delegation's comments.

45. Mr. RASMUSSEN said that Canada's contribution to medical work on torture had been of immense importance in showing that torture victims required special care. It was extremely important to incorporate that knowledge, along with the prohibition on torture, into the training provided to police and prison officers. Immigration and Refugee Board officers also needed special training in interviewing asylum-seekers who had been subjected to torture. If the same fears were stirred up and applicants became too frightened, their answers to questions might not be reliable.

46. The Canadian Centre for Victims of Torture (CCVT: report, para. 82) also worked with the International Rehabilitation Council for Torture Victims (IRCT). IRCT worked under serious economic constraints, so he was sorry to note that Canada's 1999 contribution to IRCT had been its lowest for 12 years, at US$ 15,000. Canada should seriously consider following up CCVT's valuable work with sorely needed financial help to IRCT.

47. Mr. YU Mengjia asked whether the Canadian Government was aware of allegations concerning insensitivity on the part of the Immigration and Refugee Board towards asylum-seekers, most of whom were in a distressed state. Were such allegations investigated?

48. Mr. YAKOVLEV said he had been heartened to learn that Canada's Criminal Code followed the Convention's definition of torture. However, the report made no mention of that. He would welcome more information on the subject.

49. Ms. GAER (Country Rapporteur) complimented Canada on the statistics it had provided, and wondered if in future they could be disaggregated by gender.

50. The issue of institutional child abuse had been the subject of a recent Canadian Law Commission report (Restoring Dignity: Responding to Child Abuse in Canadian Institutions), which explored ways of responding to the many allegations of sexual and physical abuse of children in Canada, including many incidents that had taken place years before. The report offered an impressive set of proposals for action and she wondered what was likely to be done with its recommendations, particularly with regard to the complaints process and the training of those involved, in order to avoid re-victimization and re-traumatization. Would there be a public inquiry? What measures could be taken to protect children from abuse in the short term and in the future?

The first part (public) of the meeting rose at 11.35 a.m.